

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CRISTOPHER M.,

Claimant,

and

INLAND REGIONAL CENTER,

Service Agency.

OAH Case No. L-2005090099

DECISION

Administrative Law Judge Greer D. Knopf, State of California, Office of Administrative Hearings, heard this matter in San Bernardino, California on February 1, 2006.

Vince Toms, Consumer Services Representative, Inland Regional Center represented the service agency, Inland Regional Center.

Luana Garrison, the claimant's mother represented the claimant Christopher M. who was not present at the hearing.

The matter was submitted on February 1, 2006.

ISSUES

Should the service agency be required to provide funding for one-half the cost of the claimant's gymnastic lessons?

1. Claimant, Christopher M. ("the claimant") is a 12 year old boy who receives services from the Inland Regional Center ("the service agency"). The claimant has a diagnosis of mild mental retardation and epilepsy and receives services from the service agency on that basis. The claimant's birthday is January 6, 1994. He lives at home with his family and attends school in a special education class in his local school district.

2. The claimant was diagnosed with epilepsy when he was an infant. Christopher suffers from one of the more extreme forms of epilepsy that has left him with poor muscle tone and difficulty with his fine and gross motor skills. The claimant receives adapted physical education provided by his local school district. He has been enrolled in adaptive physical education ("adaptive P.E.") since January 2003. The claimant also receives occupational therapy at school funded by the school district.

3. However, the claimant's mother maintains Christopher needs more physical activity in order to improve his coordination and balance. Christopher's mother believed that Christopher could benefit from the right gymnastics class and so she conducted an exhaustive search for just the right class. Since September 2005, Christopher has been attending the Little Gym in Temecula, California once a week. The gymnastics class is some 65 miles from home. Claimant's family pays \$66.00 per month for this class. The Little Gym is the only gymnastics class the family could find that was willing to work with a child with disabilities, however, they do not have a physical therapist on staff. The claimant's mother testified that she believes the gymnastics has helped her son with his balance and coordination as well as his overall self-confidence.

4. The claimant seeks to have the regional center pay for one-half the cost of his weekly gymnastics program. The service agency maintains that it is the local school district's responsibility to provide physical and occupational therapy and that the district is already providing those services. The school district provides adaptive P.E. and occupational therapy. This is a generic resource that the service agency is required to look to first before providing the service itself.

5. In addition, there was expert testimony provided at the hearing indicating that a gymnastics class such as the one the claimant is attending is not therapy and will not alleviate Christopher's developmental disabilities. That is not to say that the gymnastics class is not beneficial to Christopher. Such a class can certainly help coordination and help build self-confidence as it would with any child. The claimant offered a doctor's letter indicating that gymnastics would be good for Christopher, but there is not evidence that such a class is a medical necessity. The claimant's gymnastics class is the same type of enrichment program any family might enroll their child in for the purpose of recreation and for building physical skills and self-confidence.

6. The claimant's mother also asserts that Christopher's gymnastics class helps him develop much needed social skills. The service agency agrees that the claimant could benefit from social skills training and have offered the claimant a social recreation program. A social recreation program would help develop the claimant's social skills with the use of a social coach. Since Christopher is only 12 years old, his mother was understandably unsure about letting him go out into the community to engage in social activities with a social coach. Therefore, the family declined the service agency's offer of the social recreation program. Perhaps, in the future, as Christopher

gets older, the family will reconsider this decision. If the claimant's family chooses not to avail themselves of that service at this time, that is their choice.

LEGAL CONCLUSIONS

1. Welfare and Institutions Code section 4512 provides:

“As used in this part:

“(b) ‘Services and supports for persons with developmental disabilities’ means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with such a disability, or towards the achievement and maintenance of independent, productive, normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option....”

Welfare and Institutions Code section 4648 provides in pertinent part:

“(a)(1) It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices. The regional center shall secure services and supports that meet the needs of the consumer, as determined in the consumer's individual program plan.... (a)(3) A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer from any individual or agency which the regional center and consumer or, where appropriate, his or her parents ... determines will best accomplish all or any part of that consumer's program plan.”

2. The evidence presented herein established that the claimant needs physical and occupational therapy and that he is receiving those services from his local school district. The claimant's need for these services are currently being met by his adaptive P.E. and occupational therapy offered at school. The evidence presented by the claimant was insufficient to contradict this proof. The evidence established that Christopher benefits from his gymnastics program, but that it is a recreational program that his parents are responsible to provide and the service agency does not need to provide, as set forth in Findings 1-6.

3. The regional center must monitor the effectiveness of all services it funds as well as the cost-effectiveness of the use of public resources. (Welfare and Institutions Code sections 4501 and 4646). The claimant presented insufficient evidence of the need and effectiveness of gymnastics as physical therapy to treat the claimant's

developmental disabilities. Regional centers are required to identify and pursue generic resources for regional center consumers and are prohibited from spending regional center funds for generic services such as school services. (Welfare and Institutions Code sections 4659 and 4648a(8)). Welfare and Institutions Code section 4659, subdivision (a) provides that the regional center must identify and pursue all possible sources of funding for a consumer's services. The school district is providing the claimant with physical and occupational therapy and therefore, the claimant should continue to obtain those services at the school district. These services are currently being funded through a generic resource, the local school district. The services funded by a service agency need to be a fiscally effective use of public funds, and the service agency established that funding the gymnastic classes would not be an effective use of public funds. The regional center is therefore not required to fund one-half of the cost of the claimant's gymnastic classes, as set forth in Findings 1- 6.

ORDER

The claimant's appeal seeking funding from the service agency for one-half the cost of the claimant's gymnastics classes is hereby denied.

NOTICE

This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within the State of California.

DATED: May 22, 2006

GREER D. KNOPF
Administrative Law Judge
Office of Administrative Hearings